IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.2344 of 1993

Date of Decision: 29.11.2006

M/s J.K.Cable Industries

Petitioner

versus

Punjab State Electricity Board and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Kanwaljit Singh, Advocate for the petitioner
Shri Chanchal K.Singla, Advocate for
Shri Rajan Gupta, Advocate for the respondents

Jasbir Singh, J.

This revision petition has been filed against order dated 5.10.1990, vide which, objection application filed by the petitioner, against arbitration award dated 5.2.1988, was partly allowed and also against order dated 4.5.1993, passed by the appellate Court below, vide which appeal filed by the petitioner was also partly allowed.

Record reveals that to settle dispute between the parties, matter was referred to an Arbitrator, who pronounced his award on 5.2.1988. Respondent No.1 filed an application under Sections 14 and 17 of the Arbitration Act, 1940, praying production of the original award, referred to above, in Court. The petitioner also filed objection against the award, referred to above. The trial Court modified the award dated 5.2.1988 and it was held that respondent No.1 is entitled to a sum of Rs.1,13,000/- along with interest @ 6% per annum. Rest of the relief granted by the Arbitrator,

to respondent No.1, was negatived. The petitioner went in appeal against the order, referred to above. The appeal was partly allowed and it was ordered that respondent No.1 was not entitled to claim Rs.5000/-, which were awarded towards costs of the arbitration proceedings. Rest of the judgment passed by the trial Court was affirmed.

Counsel for the petitioner has vehemently contended that the price of aluminum, a controlled commodity, was enhanced by the Union of India on 9.5.1984, as such, it was not possible for the petitioner to supply the material at the quoted rates, which was based upon rates of the aluminum before hike in price, referred to above. Before the Court below and here also, to claim relief, reliance has been placed upon Section 64-A of the Sales of Goods Act, 1930 (in short the Act).

Contract agreement was seen at the time of arguments. Offer made by the petitioner was firm and there was no condition in existence, in the contract agreement that in case of increase in the price of a controlled commodity, to be used in the material supplied, the petitioner will be at liberty to claim enhanced rates on account of that. By taking note of contents of the contract agreement, the Court below has rightly said that the provisions of Section 64-A of the Act were not applicable to the facts of the present case. It is apparent from the records that before passing the award, Arbitrator had given ample opportunity to the petitioner, to explain his case. Counsel for the petitioner further states that after hearing the arguments, the Arbitrator had directed the parties to file written arguments upto 10.2.1988. However, without getting written arguments from the petitioner, award was pronounced on 5.2.1988, as such, the award is liable to be set aside. This argument has rightly been negatived by both the Courts below. It has come on record that arguments in length were heard by the Arbitrator. To be on

the safer side, parties were also asked to give written arguments. The Arbitrator, when noticed that the Hon'ble Supreme Court has not granted any stay of the passing of the final order, as intimated by the petitioner, pronounced the award on 5.2.1988. As the petitioner has failed to convince this Court on merits, on the basis of this minor technical objection, no benefit can be given to the petitioner. No case is made out for interference in pure findings of facts.

Dismissed.

November 29, 2006 **(Jasbir Singh)**
gk **Judge**